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FILED
FEB 4 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 979

ERTEL MANUFACTURING CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

HARRY P. DEES,
905 Southern Securities Bldg.,
Evansville, Indiana,
Attorney for Petitioner.

HARRY P. DEES,
ARTHUR R. DONOVAN,
JOSEPH A. YOCUM,
KAHN, DEES, DONOVAN & KAHN,
905 Southern Securities Bldg.,
Evansville, Indiana,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	5
Reason for Granting the Writ	7
An Important Federal Question Is Presented by the Proceedings Below as to the Conflict Between the Evidentiary Standards Applied by the National Labor Relations Board in Finding Violations of Section 8(a) (1) and Section 8(a) (3) of the Labor-Management Relations Act as These Standards Affect the Scope of Judicial Review in the Federal Circuit Courts of Appeals Under Section 10 of the Labor-Management Relations Act	7
Conclusion	14
Appendix A—Opinion of the Court Below	15

CASES CITED.

American Freightways Co., Inc., 124 NLRB 146, 147 (1959) 8
Falstaff Brewing Corporation, 128 NLRB 294, fn. 2, 295 (1960) 8
Glen Raven Silk Mills, Inc., 101 NLRB 239, 240 (1952) 8
Indiana Metal Products Corporation, 100 NLRB 1040, 1041-43 (1952) 9
N. L. R. B. v. Brown, 85 S. Ct. 980 ..... 9, 10, 13
N. L. R. B. v. Pittsburgh S. S. Co., 340 U. S. 498 13
N. L. R. B. v. Walton Manufacturing Company, 369 U. S. 404 ..... 8, 13
Paul M. O'Neill Int'l Detective Agency, Inc., 124 NLRB 167, 172 (1959) 8
Radio Officers' Union v. N. L. R. B., 347 U. S. 17, 45 .. 9
Susquehanna Broadcasting Co., Etc., 139 NLRB 1294, 1295 (1962) 8
Universal Camera Corp. v. N. L. R. B., 340 U. S. 474 .. 13

STATUTES.

Section 8(a) (1) and (3) of the Labor-Management Relations Act, 29 U. S. C. 158(a) (1) and (3), 61 Stat. 140 ..... 2, 6, 7, 8, 10, 11
Section 10(e) of the Labor-Management Relations Act, 29 U. S. C. 160(e), 61 Stat. 146 ..... 3, 7

TEXTS.

Cooper, "The 'Substantial Evidence' Rule," 44 A. B. A. J. 945 (1958) 13
Note, "Administrative Law: Labor Law: Substantial Evidence Test," 48 Cornell L. Q. 309 (1963) 13
Sahm, "The Discharge for Union Activities," 1961 Labor L. J. 324, 327-28 9

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Ertel Manufacturing Corporation, prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Seventh Circuit, granting enforcement of an order of the National Labor Relations Board on the ground that the findings of the Board were supported by "substantial evidence" on the record considered as a whole.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Seventh Circuit printed on October 19, 1965 is reported in 352 F. 2d 965 (CCA-7 1965); 60 LRRM 2280; 52 LC P. 16,687 and appears at Appendix A, pages 15 to 22 attached to this petition for a writ. A Petition for rehearing was denied on November 30, 1965. The decree of the Court of Appeals for the Seventh Circuit was entered on December 16, 1965. The Decision and Order of the National Labor Relations Board appears in the Record. (R. 2-60.)

JURISDICTION.

The jurisdiction of the Court is invoked under Section 1254(1) of the Judicial Code.

QUESTION PRESENTED.

Whether the Court below was correct in finding that Petitioner violated Section 8(a)(1) of the Labor-Management Relations Act and Section 8(a)(3) of the Labor-Management Relations Act, where the National Labor Relations Board applies different standards of proof to these provisions of the Labor-Management Relations Act, yet Section 10 of the Labor-Management Relations Act requires the application of a single evidentiary standard to questions involving judicial review of findings of violations of the Labor-Management Relations Act by the National Labor Relations Board.

STATUTE INVOLVED.

Section 8(a)(1) and (3) of the Labor-Management Relations Act, 29 U. S. C. 158(a)(1) and (3), 61 Stat. 140 provides as follows:

> Sec. 8(a) It shall be a unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

Section 10(e) of the Labor-Management Relations Act, 29 U. S. C. 160(e), 61 Stat. 146, provides as follows:

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts